

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 22-cv-22714-BLOOM

LESSIE EARL PROCTOR,

Plaintiff,

v.

JOE BIDEN,

Defendant.

ORDER DISMISSING CASE

THIS CAUSE is before the Court upon a *sua sponte* review of the record. Plaintiff Lessie Earl Proctor has filed what he purports to be a “1983 Civil Action” against the President of the United States, Joe Biden. ECF No. [1] at 1. Although Plaintiff claims to be seeking one billion dollars in damages and a pardon from the President, the substance of his claims arise from the denial of a previously filed 28 U.S.C. § 2255 Motion to Vacate in Case No. 22-cv-20066-RUIZ.¹

See id. at 2 (“In Pensacola Florida the 922(g) were droped [sic]. The courts in Miami charged with 18 U.S.C. § 924(c)(1)(A) for that to stick.”); *see also* ECF No. [1-1] at 1–7 (attaching the § 2255 motion filed in Case No. 22-cv-20066). Mindful of the obligation “to look behind the label of a *pro se* inmate’s motion to determine if it is cognizable under a different statutory framework[,]” *United States v. Stossel*, 348 F.3d 1320, 1322 n.2 (11th Cir. 2003), the Court reconstrues Plaintiff’s Complaint as a successive § 2255 motion and dismisses it for lack of subject matter jurisdiction.

To start, the Court is confident that this instant action is not cognizable under 42 U.S.C.

¹ The Court has taken judicial notice of the docket sheet and documents filed in Case No. 22-cv-20066-RUIZ, which is accessible through PACER and CM/ECF via <https://flsd-ecf.sso.dcn/cgi-bin/iquery.pl>. *See* Fed. R. Evid. 201; *United States v. Rey*, 811 F.2d 1453, 1457 n.5 (11th Cir. 1987) (“A court may take judicial notice of its own records and the records of inferior courts.”).

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§ 1983. Section 1983 only applies to officials who operate under “color of state law,” so “§ 1983 actions do not lie against federal [officials].” *Fullman v. Graddick*, 739 F.2d 553, 560 (11th Cir. 1984). If Plaintiff wished to sue a federal official such as President Biden, then we would have to analyze the suit under the dictates of *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). But *Bivens* also cannot apply in this instance since, by Plaintiff’s own admission, President Biden is not personally responsible for any identifiable constitutional harm. ECF No. [1] at 1–2; *see also Thibeaux v. United States Att’y Gen.*, 275 F. App’x 889, 892 (11th Cir. 2008) (“*Bivens* claims can be brought against federal officers in their individual capacities only; they do not apply to federal officers acting in their individual capacities.”).²

Conversely, a § 2255 motion is “the exclusive mechanism for a federal prisoner to seek collateral relief” from his or her federal sentence. *McCarthan v. Dir. of Goodwill Indus.-Suncoast, Inc.*, 851 F.3d 1076, 1081 (11th Cir. 2017). That is clearly the object of the instant “Complaint” since Plaintiff is explicitly arguing that he is serving an illegal federal sentence. *See* ECF No. [1] at 1–2. Plaintiff previously filed a § 2255 motion in Case No. 22-cv-20066, which challenged the same sentence, but Judge Rodolfo A. Ruiz rejected Plaintiff’s argument and expressly found that Plaintiff’s sentence was legal. *See Order Dismissing Motion to Vacate, Proctor v. United States*, No. 22-cv-20066 (S.D. Fla. Apr. 11, 2022), ECF No. [4] at 4 (“Both Movant’s Indictment and the jury verdict form clearly show that the sole predicate offenses for Movant’s § 924(c) convictions were [substantive Hobbs Act robberies], and so Movant’s § 924(c) convictions are plainly legal.”).

Since Plaintiff “previously filed a § 2255 motion to vacate, he must apply for and receive permission from the court of appeals before filing a successive § 2255 motion.” *Samak v. Warden*,

² On a more fundamental level, the Court would still dismiss the case even if it could be construed under § 1983 or *Bivens*. Plaintiff has failed to pay the filing fee or file a motion to proceed *in forma pauperis*, and, therefore, the case could be properly dismissed for failure to prosecute under Fed. R. Civ. P. 41(b). *See, e.g., Castro v. Dir., F.D.I.C.*, 449 F. App’x 786, 788 (11th Cir. 2011).

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FCC Coleman-Medium, 766 F.3d 1271, 1274 (11th Cir. 2014). This same restriction applies even if Plaintiff was merely seeking reconsideration of Judge Ruiz's Order under Fed. R. Civ. P. 60(b).

See Farris v. United States, 333 F.3d 1211, 1216 (11th Cir. 2003) ("Because Farris was moving to vacate his sentences and he previously had filed a § 2255 motion, the district court did not err in construing his [Rule 60(b) motion] as a successive § 2255 motion."). "Without authorization, the district court lacks jurisdiction to consider a second or successive [§ 2255 motion]." *Id.* Since Plaintiff has not received permission from the Eleventh Circuit Court of Appeals to file a successive § 2255 motion, the Court lacks subject matter jurisdiction to consider this action.³

Accordingly, it is **ORDERED AND ADJUDGED** that this action is **DISMISSED** for lack of subject matter jurisdiction. The Clerk is directed to **CLOSE** the case. The Clerk is also **DIRECTED** to attach the docket sheet for Case No. 22-cv-20066-RUIZ to this Order for its inclusion to the record. All pending motions are **DENIED** as moot.

DONE AND ORDERED in Chambers at Miami, Florida, on August 30, 2022.



BETH BLOOM
UNITED STATES DISTRICT JUDGE

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³ Plaintiff also appealed Judge Ruiz's Order to the Eleventh Circuit, *see* Notice of Appeal, *Proctor v. United States*, No. 20-cv-20066 (S.D. Fla. Aug. 25, 2022), ECF No. [7], which further divests this Court of jurisdiction, *see Doe, I-13 ex rel. Doe Sr. I-13 v. Bush*, 261 F.3d 1037, 1064 (11th Cir. 2001).